THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

WAGGONER CARR
ATTORNEY GENERAL

September 9, 1966

Honorable Harold Vittitoe
County Attorney
Brooks County Courthouse
Falfurrias, Texas

Opinion No. C-758

Re: Exemption from ad valorem taxes of properties belonging to The Ed Rachal Foundation

Dear Mr. Vittitoe:

We have been furnished with several letters and briefs in connection with your request on the above captioned matter. We quote the following excerpt from one of these briefs.

> "The properties of the Foundation passed under the Last Will and Testament of Ed Rachal, Deceased, which has been duly probated in the County Court of Brooks County, Texas. The Foundation was chartered under the Non-Profit Corporation Act for the State of Texas on July 29, 1965. There have been no past charitable activities of the Foundation in view of its newness, however, the planned future activities of the Foundation will probably be stronger in the public library area of public charity, and although present plans of the Foundation are indefinite, they will be within the limits of its purposes as set forth in its Articles of Incorporation. A copy of its Articles of Incorporation is enclosed for your use. As indicated in the letter to the various taxing authorities The Ed Rachal Foundation has been held to be exempt from Federal Income Taxes under the provisions of Section 501(a) as a corporation described in Section 501(c) (3) of the Internal Revenue Code inasmuch as the corporation is organized and operated exclusively for charitable purposes. For the same reason the Office of the Comptroller of Public Accounts for the State of Texas has ruled The Ed Rachal Foundation exempt from Franchise Taxes as a purely public charity." (Emphasis Supplied.)

At the outset, the fact that The Foundation has been held to be exempt from federal income taxes and has been accorded an exemption from franchise taxes by the Comptroller, is not determinative of exemption from ad valorem taxes. Section 2 of Article VIII of the Constitution of the State of Texas empowers the Legislature to exempt from taxation certain enumerated properties, among which are ". . .institutions of purely public charity." Section 7 of Article 7150, Vernon's Civil Staututes, which was enacted in pursuance to the foregoing Constitutional authorization, reads as follows:

> "Public charities. - All buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this article is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when the funds, property and assets of such institutions are placed and bound by its laws to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons."

We have been furnished with considerable information about properties, both real and personal, located in Brooks, Cameron, and Webb Counties, Texas, as well as with certain arguments that the use to which said properties are presently being put justifies the allowance of charitable exemptions. Since we do not agree, we do not deem it necessary to take up the uses of said properties at this time, since, as stated in the above quoted portion from one of the briefs, there have been no charitable activities by the Foundation in view of its newness and, at the moment, there are only planned

future charitable activities, the precise nature of which have not been determined.

Numerous decisions of our courts clearly establish the rule that in order to gain the exemption granted by Section 7 the charitable institution must not only own the property for which exemption is sought, but must, in addition, make an actual, direct and exclusive use of said property for charitable purposes. Santa Rosa Infirmary v. City of San Antonio, 259 S.W. 926 (Tex. Com. App. 1924); Benevolent and Protective Order of Elks v. City of Houston, 44 S.W. 2d 488 (Tex. Civ. App. 1931, error ref.); City of Longview v. Markham-McRee Memorial Hospital, 137 Tex. 178, 152 S.W. 2d 1112 (1941); Markham Hospital v. City of Longview, 191 S.W. 2d 695 (Tex. Civ. App. 1945, error ref.)

The case of Hedgecroft v. City of Houston, 150 Tex. 654, 244 S.W. 2d 632 (1952) demonstrates what facts are sufficient to constitute "actual use." The court was there concerned with the following facts. The Hedgecroft Corporation had acquired title to the property in question through gift and conveyance on December 30, 1948. Before that time the corporation had agreed with a construction company to make the necessary alterations and repairs of the property to fit it for the operation of a hospital, clinic and training school; and beginning with the week ending July 7, 1948, and continuing until December 29, 1948, the construction company had been preparing plans for repairs and alterations. From August 1, 1948, through December 27, 1948, a blue print company had furnished numerous blue prints concerning the contemplated repairs. Prior to the corporation's acquisition of the property in question and immediately thereafter including January 1, 1949, the corporation was engaged in planning and making the necessary repairs. The remodeling was completed on May 13, 1949, to an extent which allowed the clinic to move on to the premises; and the clinic had since been continuously in operation there. The City of Houston and the Houston Independent School District instituted a suit for taxes for the year 1949.

In holding that the property in question was exempt, the court reviewed decisions in other States in which exemption had been accorded on the basis that if the subsequent use of the premises created a tax exempt situation then a use which was confined to readying them for such purpose established a right to exemption.

At page 636 the court said:

> ". . . The work proceeded until it was completed on May 13, 1949, and since that time the hospital and clinic have been operated as a public charity. The facts alleged show, in our opinion, an actual and direct use of the property on and prior to January 1, 1949, for the charitable purpose." (Emphasis supplied.)

The most recent case involving the exemption of properties belonging to a charitable foundation is David Graham Hall Foundation v. Highland Park, et al., 371 S.W. 2d 762, (Tex. Civ. App. 1963, error ref., n.r.e.). The court was concerned with the following facts as stated at page 765 of the opinion:

> "The David Graham Hall Foundation was established in 1940. Its corporate charter recites that it was created for the 'support of any benevolent, charitable, educational or missionary undertaking.' Over the years it has engaged in many laudable activities, among them the study, prevention and cure of communicable diseases, the establishment of blood banks, etc.
>
> "The Foundation is sole owner of the property in question, Lot 16 of Block 87, Highland Park 4th Installment. The dimensions of the lot are 250' by 250'. On it four buildings are located: a main building and three residences.
>
> "The main building houses the Foundation's administrative offices and laboratories. This building also houses the administrative offices of the David Graham Hall Trust, a related but separate organization. The Trust owns many properties the revenue from which is devoted to the support of the Foundation.
>
> . . .
>
> "Of the three residences on the property, two of them are rent houses, the revenues from which are devoted to the Foundation's activities. The third residence is known as the caretaker's house. This house has also been rented for an indeterminate period for the sum of $50.00 per month. During World War

> II these houses were occupied in part at least at a nominal rental by war refugees who performed services for the Foundation."

The court held that the property of the charitable organization was not exempt from the payment of ad valorem taxes since the particular property in question had not been used exclusively for charitable purposes. At page 764, the court stated:

> "As was pointed out by our Supreme Court recently it will not suffice for one to show that he comes within the statutory provisions for tax exemption if the facts do not bring his case within the requirements for tax exemption as laid down in Art. VIII, Sec. 2 of our State Constitution. River Oaks Garden Club v. City of Houston, Tex. 370 S.W. 2d 851. . . .
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> . . .
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> ". . . The constitutional requirement is two-fold: the property must be owned by the organization claiming the exemption; and it must be exclusively used by the organization, as distinguished from a partial use by it and a partial use by others whether the others pay rent or not. / Authorities omitted / . . ." (Emphasis theirs)

It is our opinion that under the decisions above cited none of the properties belonging to the Foundation are now exempt from ad valorem taxes, because said properties are not presently being devoted to the actual, direct and exclusive charitable use requisite to exemption.

S U M M A R Y

> The properties belonging to The Ed Rachal Foundation are not now exempt from ad valorem taxes because said properties are not presently being devoted to the

actual, direct and exclusive charitable use requisite to exemption.

Yours very turly,

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APPROVED:
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